

Department of Ecology rulemaking notice: Sediment Management Standards & Water Quality Standards for Surface Waters

October 27, 2011

Rule Pre-proposals

Sediment Management Standards (WAC173-204)

Water Quality Standards for Surface Waters of the State of Washington (WAC 173-201A)

Ecology is proposing to amend two rules:

- Sediment Management Standards (SMS) (WAC 173-204)
- Water Quality Standards for Surface Waters of the State of Washington (SWQS) (WAC 173-201A)

What is the purpose of the Sediment Management Standards (SMS) rule-making?

In February 2009, Ecology started a combined rule-making effort to amend the Model Toxics Control Act (MTCA) and the SMS standards. In December 2010, we decided to put the MTCA rule-making on hold and continue working on the SMS. Now Ecology is withdrawing the February 2009 rule-making pre-proposal (CR-101) and filing a new CR-101 to clarify the focus of the SMS rule-making.

The SMS rule-making will include:

- Updates to the SMS cleanup decision framework to address bioaccumulative chemicals that are a risk to both human health and the environment. This includes methods and policies for establishing risk-based cleanup standards, procedures for incorporating background concentrations, and requirements for sediment cleanup actions.
- Fish and shellfish consumption rates used to support cleanup decisions.
- Chemical and biological criteria to support cleanup decisions at freshwater sediment sites.
- Clarifying requirements for coordinating cleanup actions and source control measures to prevent recontamination.

Case-by-case decisions under the current rule cause lengthy cleanup delays, inefficient use of available cleanup funds, and continued exposure to unhealthy levels of hazardous substances. Rule revisions are needed to speed up the removal or capping of contaminated sediments by providing clear, workable, and predictable requirements for sediment cleanup actions.

What is the purpose of the Surface Water Quality Standards rule-making?

The Surface Water Quality Standards rule-making will:

- Clarify and modify existing regulatory tools.

- Evaluate and potentially add other tools identified during the rule-development process.
- Evaluate and potentially add other amendments related to updates listed above.

These amendments will provide flexible and predictable regulatory tools that help entities comply with new source control requirements or discharge limits. The changes will allow entities to maintain compliance with requirements while they effectively work toward meeting permit limits and controlling sources of pollutants.

How are these rule-makings related?

Both the SMS and the SWQS rules implement the federal Clean Water Act. (SMS also implements the state Model Toxics Control Act.) Because of this, there is some overlap in the issues being addressed by the two rule-makings, such as source control and fish consumption rates.

Ecology's Toxics Cleanup and Water Quality Programs are working together on key issues where integration is needed and where there is overlap between the two rule-makings.

Ecology plans to develop updated rules that can be implemented by the agency and by the regulated community. Our goal is to be fully transparent, and we are planning discussions with tribes and stakeholders affected by these rules. We are working on identifying multiple ways to collect feedback in these rule-making processes.

How do these rule-makings impact future updates to the Surface Water Quality Standards?

Starting in 2012, Ecology plans to begin an additional rule-making to amend the Surface Water Quality Standards. The amendments will include updates to the human health criteria. When developing the human health criteria, Ecology will consider the fish consumption rate adopted in the SMS rule-making described above. Ecology will notify interested parties when we begin the second phase of the SWQS rule-making.

When did Ecology's Director decide to proceed with these rule-makings?

Governor Gregoire issued an executive order (10-06 and 11-03) directing state agencies to suspend non-critical rule-making, while providing several exemptions for critical rule-making to proceed.

- For SMS, the Director of Ecology decided to proceed with rule-making in December 2010 consistent with exemption criteria (3) (d), outlined by the Office of Financial Management. This new rule-making is also consistent with this criterion.
 - *3d - Necessary to protect public health, safety, and welfare or necessary to avoid an immediate threat to the state's natural resources.*

- For SWQS, the Director of Ecology made the decision to proceed with the first phase of rule-making in October 2011. This decision is consistent with exemption criteria (3) (e), outlined by the Office of Financial Management.
 - *3e - Beneficial to or requested or supported by the regulated entities, local governments or small businesses that it affects.*

For more information about the Director's decisions, please go to our Rule-Making Suspension Decision Updates Page at www.ecy.wa.gov/laws-rules/suspension_update.html.

Where can I get more information about these rule-makings?

SMS rule-making web page:

www.ecy.wa.gov/programs/tcp/regs/2011-SMS/2011-SMS-hp.html

SWQS rule-making web page:

www.ecy.wa.gov/programs/wq/swqs/RuleRev2011.html

Where can I get more information about fish consumption rates?

You can find more information about fish and shellfish consumption rates as they relate to these rule-making efforts at:

www.ecy.wa.gov/toxics/fish.html

Who can I contact for more information?

Sediment Management Standards (WAC 173-204)

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